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BY: KATHERINE GONZALEZ VALENTIN, AUSA

ALSO PRESENT:
MIKE FIGUEROA

1 MS. RODRIGUEZ FRANK: My name is Elaine
2 Rodriguez. I am here in the case of Mike Figueroa v.
3 Department of Veterans Affairs. I have Mr. Mike
4 Figueroa who's right next to me and also present is the
5 defendants' counsel --

6 MS. GONZALEZ VALENTIN: Katherine
7 Gonzalez.

8 MS. RODRIGUEZ FRANK: Okay. She's going
9 to take the oath or I'm going to take the -- I can take
10 the oath of both the lady that is going to transcribe
11 the deposition and the deponent.

12 Can you raise your right hand. State
13 your name for the record.

14 THE COURT REPORTER: Elba Martinez.
15 (The court reporter was duly sworn.)

16 MS. RODRIGUEZ FRANK: Mr. Eduardo Diaz,
17 raise your right hand. Do you have any objection to
18 swearing because some people do?

19 THE DEPONENT: No.

20 MS. RODRIGUEZ FRANK: No. Okay. State
21 your name for the record.

22 THE DEPONENT: My name is Eduardo Diaz.
23 (The deponent was duly sworn.)

24 MS. RODRIGUEZ FRANK: Okay. You already

1 told me your name for the record. And what is your
2 position with the agency?

3 There's another thing we haven't stated.
4 Okay. Among the things that she and I agreed before the
5 deposition is the following: This is going to be put in
6 a words and paper, it's going to be transcribed. I'm
7 going to send this to her and then it's going to be sent
8 to you.

9 You have 30 days after it's sent to you
10 to review it. After that, if you have any questions, at
11 the end there's an "fe de erata" in which you write in
12 all the things that you want, because sometimes they
13 cannot understand what you're saying or maybe you want
14 to correct something that you stated.

15 In addition to that, if you're in
16 agreement in those 30 days, you can sign it and send it
17 back to me through her.

18 If you don't want to sign it, you just,
19 and you think it's okay, you wait until the 30 day
20 period started and you send it to us. Is that okay?

21 THE DEPONENT: Okay.

22 MS. RODRIGUEZ FRANK: And you don't have
23 to do anything. If you don't do anything, neither sign
24 it nor send it to her, we must understand and it's our

1 agreement today, that you don't have any objections to
2 the transcription that she prepared.

3 Is that okay?

4 THE DEPONENT: Yes.

5 MS. RODRIGUEZ FRANK: In addition to
6 that, even though you have seen and I imagine a lot of
7 trials on the TV and stuff, there's rules of evidence
8 that allows us to raise objections.

9 In this case I'm going to be asking a lot
10 of stuff that may be objectionable. She's going to
11 object and she's, she's not waiving those because they
12 may be raised if you are going to testify in this case
13 in court, then the objections are going to be raised.

14 The only ones that are not waived today
15 are the ones related to privilege and to form. If I ask
16 a question that she objects the form that I have used,
17 she doesn't like how I expressed it, she can object it
18 and I'll rephrase the question for you. "¿Entendio?"

19 THE DEPONENT: Uh-huh.

20 MS. RODRIGUEZ FRANK: Okay. And these
21 are the stipulations that are normally contained at the
22 beginning of a deposition so you can also tell me as of
23 today whether you want to waive the signature and just
24 wait for the 30 day period or if you're going to sign it

1 anyway. What is your option, your selection?

2 MS. GONZALEZ VALENTIN: Counsel, I think
3 I won't even mention the, the issue. Thirty days for
4 the signature and all corrections.

5 MS. RODRIGUEZ FRANK: So you want to sign
6 it, okay.
7 Whereupon,

8 EDUARDO DIAZ BURGOS
9 was called as a witness, having been duly sworn, was
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. RODRIGUEZ FRANK:

13 Q Okay. What is the position that you presently
14 hold with the agency?

15 A I am the supervisor of the biomedical
16 engineering.

17 Q Supervisor?

18 A Biomedical.

19 Q Biomedical engineering?

20 A Yes.

21 Q Okay. And what is your educational
22 background?

23 A I have a bachelor's degree from the Mayaguez A
24 & E, year 1937.

1 Q You must have attended school with my father.

2 Okay.

3 A Then I am member of the College of Engineers.

4 Q So you are a professional engineer?

5 A Yes, I am, a professional engineer.

6 Q Okay. Can you tell me what is different
7 between a professional engineer and an engineer that
8 only has a degree?

9 A Well, when you get the degree of graduate
10 engineer you have to take the, the professional
11 engineering examination offered by the State Department.

12 When you approve this, what is called the
13 "revalida" of engineers and when you get the license
14 number from the State Department, you wait to wait four
15 years in the practice of the profession to get the title
16 of professional engineer but you have to submit the
17 evidence that you have been in practice of engineer and
18 you have to get the signature of three professional
19 engineers more that support your position and you submit
20 all these papers to the State Department and they're the
21 ones that issue the license.

22 Q And then you an add at the end of your title
23 the words PE?

24 A Uh-huh.

1 Q Okay. And as a supervisor of biomechanical
2 engineering, can you summarize for me what are your
3 duties and responsibilities.

4 A Right now?

5 Q Uh-huh.

6 A Well, I am in the charge of this shop, this
7 shop, this, with the maintenance and repairs of the
8 medical instrumentation that we use in the hospital.

9 Q And what type of engineer are you, civil?

10 A Electrical.

11 Q Electrical engineer?

12 A Yes, electrical engineer with concentration in
13 electronics and communication.

14 Q So you have under your charge all the medical
15 instruments, that you are the one who has the employees
16 to repair them?

17 A Yes, yes. Either by the in house personnel or
18 by outside service that I could request from companies
19 or service contracts.

20 Q Okay. And once you are a PE, are you required
21 to pay like a yearly fee with the College of Engineers?

22 A Yes.

23 Q In order to maintain the license?

24 A Yes, yes. We have to pay \$250. a year.

1 Q That's not much. That's exactly what we pay
2 as lawyers.

3 A Yes.

4 Q But you can practice engineering without
5 having the license?

6 A Not supposed to, not supposed to.

7 Q You're not supposed to?

8 A No, you're not supposed because one of the
9 rules of the law, because the law, the College of
10 Engineers is the one that "regula" the profession and
11 look for the, to be in compliance the profession and
12 there are three things that you have to, to comply.
13 The first is that you are a graduate, an engineer.
14 The second that you pass the professional examination.

15 Q The bar.

16 A Yes, the bar and the third is that you are
17 updated with the quota.

18 Q Okay. So that you pay on a yearly basis?

19 A Yes. You have to pay in a yearly basis.

20 Q But you are no disbarred like we are, in case
21 we don't pay?

22 A Well, if you don't pay, then you are taken out
23 of the list that are authorized to practice the
24 profession.

1 Q Okay.

2 A And if you are taken out of the list, you're
3 not supposed to practice the profession until you submit
4 a new request to be included again, back again to
5 practice the profession.

6 Q But how about your employer, the Department of
7 the Veterans Affairs, does it require that everybody
8 have a license?

9 A Well, for me the Department of Veterans
10 Affairs do not require to be a PE or to be updated in
11 the, in the pay of quota or whatever.

12 Q But you do every year?

13 A No. In my case I do because I'm interested,
14 if I can do outside practice, I can do it.

15 Q Okay.

16 A And I want to preserve my license updated
17 because if you do not keep updated, then you will have
18 to pay back --

19 Q Oh, all those years in which you were not --

20 A All those years that you did not pay, you have
21 to pay back.

22 Q But anyway, for your, the type of work that,
23 in the Department of Veterans Affairs, you're not
24 required to have the license in place?

1 A No.

2 Q Okay. How many employees do you have under
3 your charge?

4 A Well, right now I have around eight.

5 Q Eight. Are they engineers or maintenance?

6 A No, no. They are, most of them are
7 technicians.

8 Q Technicians. Okay.

9 A In the past I have more but by the beginning
10 of this year, the Chief of Facilities Maintenance
11 Services, in this case, Engineer Marrero, is
12 implementing some changes and I was, as the
13 biomechanical engineer, I was in charge of the
14 electrical shop, I was supervising two shops.

15 Then he removed this shop from my supervision and
16 assigned it to Engineer Bou.

17 Q Okay.

18 A Engineer Bou is supervising the electrical
19 shop and also what is called the graphic control because
20 the, the, in our organization the, the electrical shop
21 supervisor also supervises the graphic control operators
22 that are in charge of the operation of the air
23 conditioning system.

24 Q Okay.

1 A And you have two sections in charge and this
2 specialty of graphic control is more oriented towards
3 the air conditioning than the mechanical engineering and
4 maybe this is the main reason why.

5 Q Okay. But were not given an explanation for
6 the reorganization?

7 A No.

8 Q No?

9 A No.

10 Q How many years have you worked for VA?

11 A I will, I will have 25 years by the end of, by
12 December of this year.

13 Q So if you graduated in 1935 you worked before,
14 you had other experience related to the U.S. Government?

15 A Yes. When I arrived to the U.S. Government, I
16 had 13 years of experience outside in the petrochemical
17 industry mechanical and the Puerto Rico Medical Center.

18 Q Okay. Do you remember that there was an F & S
19 merger --

20 A Yes.

21 Q -- in which Mr. Morley became the head --

22 A Yes.

23 Q Chief?

24 A Yes.

1 Q Okay. And after this merger, what were your
2 responsibilities? I need a little bit of background.
3 You were still in charge of the same thing you are right
4 now?

5 A Well, more or less, in the merge I, my
6 responsibilities were not affected.

7 Q Okay.

8 A Remained the same.

9 Q And those were the same that you have today
10 or?

11 A No, less. The electrical responsibilities now
12 but I was in charge of the electrical section, including
13 the traffic control operations plus the biomechanical
14 section. They changed, I don't know was by the
15 beginning of this year, sometime in, but I don't
16 remember exactly but was sometime. Could be February,
17 January of this year.

18 Q Okay. And during those years, Charles Morley
19 was your direct supervisor or you had another person who
20 was your supervisor?

21 A No, Charles Morley.

22 Q Charles Morley?

23 A Yes, because there was no, no, no assistant
24 chief.

1 Q Okay.

2 A Because when I arrived to the, to the VA
3 Medical Center, it was in 1980, the organization include
4 the service chief and assistant chief. Engineer Rafael
5 Lluch was the service chief and Engineer Manuel Santiago
6 was the assistant chief.

7 Then I report to Engineer Rafael Lluch.

8 Q To the assistant?

9 A No, to the assistant was Mr. Manuel Santiago.

10 Q And what happened after the merger? They
11 decided to eliminate the assistant chief's position?

12 A Well, the problem was, this was around,
13 sometime during, between 1990 or 1995 that Rafael Lluch
14 accepted the retirement and he, the pay that they were
15 offering.

16 Q Okay. A special pay so that he would retire?

17 A Yes, they were offering -- What is the name?

18 Q They opened a window?

19 A Yes, they opened a window that you get 25,000
20 bonus.

21 Q Okay.

22 A For getting out but the, the, the position is
23 freeze.

24 Q Okay.